

Judge: Honorable Mary Jo Hester
Chapter 7

CHRISTOPHER J. MARSTON
ATTORNEY FOR
STEPHEN LEE ATES, DEFENDANT
Davies Pearson, P.C.
920 Fawcett Ave.
Tacoma, WA 98402
cmarston@dpearson.com

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT TACOMA

In Re:

Bankruptcy No. 21-41090-MJH

STEPHEN LEE ATES

Debtor.

WILLIAM C. GIBSON AND LAUREL
GIBSON.

Adversary Proceeding
No.: 21-04051-MJH

STEPHEN LEE ATE,¹

ANSWER AND AFFIRMATIVE DEFENSES (STEPHEN LEE ATES)

Defendant/DEBTOR.

And
KELLY ANN BRACE,

DAVIES PEARSON, P.C.
ATTORNEYS AT LAW
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DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

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COMES NOW the Defendant, STEPHEN LEE ATES, by and through his attorney, CHRISTOPHER J. MARSTON of Davies Pearson, P.C., and submits this Defendant's Answer and Affirmative Defenses:

JURISDICTION AND VENUE

1. Defendant admits the allegations contained herein as to himself as a Defendant, and denies knowledge and information sufficient to form a belief as to those allegations against Kelly Ann Brace.

2. Defendant admits the allegations contained herein.

3. Defendant admits the allegations contained herein as to himself as a Defendant, and denies knowledge and information sufficient to form a belief as to those allegations against Kelly Ann Brace.

4. Defendant admits the allegations contained herein as to himself as a Defendant, and denies knowledge and information sufficient to form a belief as to those allegations against Kelly Ann Brace.

THE PARTIES

5. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained herein.

6. Defendant admits the allegations contained herein.

7. Defendant admits the allegations contained herein.

8. Defendant admits that, at times, he commingled personal funds and FCHI's funds, and he admits that he formed FCHI, among other reasons, to shield him from personal

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

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1 liability as is allowed under the law. As to the remaining allegations contained herein, they
2 are denied.

3 **COURSE OF PROCEEDINGS**

4 9. Defendant admits the allegations contained herein.
5 10. Defendant denies the allegations contained herein.
6 11. Defendant admits the recitation of its schedule of assets. Defendant denies all
7 other allegations contained herein.

8 12. Defendant admits the allegations contained herein.
9 13. Defendant admits the allegations contained herein.
10 14. Defendant admits the allegations contained herein.
11 15. Defendant admits the allegations contained herein.
12 16. Defendant admits the allegations contained herein, except that these overdrafts
13 were irrespective of any "necessary and promised costs of the Gibson's home construction,"
14 which particular allegation Defendant thus denies.

15 17. Defendant admits the allegations contained herein.
16 18. Defendant admits that he told Plaintiffs he was overbudget on the project, and
17 that he acknowledged difficulty in paying subcontractors and materialmen. Defendant denies
18 all other allegations contained herein.

19 19. Defendant denies knowledge and information sufficient to form a belief as to
20 the allegations contained herein with respect to the filing of a mechanic's lien against the
21 Gibson Residence. Defendant admits that FCHI did not pay a plumbing subcontractor, but this
22 was because Defendant had previously been fired by Plaintiffs.

23 20. Defendant admits the allegations contained herein.

24 **DEFENDANT'S ANSWER
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1 21. Defendant denies that he spent \$57,000.00 of Plaintiffs' deposit on "his
2 personal living expenses, lifestyle, and other unpaid corporate obligations." Defendant admits
3 the other allegations contained herein.

4 22. Defendant denies the allegations contained herein.

5 23. Defendant admits the allegations contained herein.

6 24. Defendant denies knowledge and information sufficient to form a belief as to
7 the allegations contained herein.

8 25. Defendant denies that "all" of any money he withdrew from FCHI corporate
9 accounts "can be attributed to funds requested, and received, for Plaintiffs' construction
10 project." Defendant denies knowledge and information sufficient to form a belief as to the
11 other allegations contained herein.

12 26. Defendant admits the allegations contained herein.

13 27. Defendant admits the allegations contained herein.

14 28. Defendant denies knowledge and information sufficient to form a belief as to
15 the allegations contained herein, and therefore denies the same.

16 29. Defendant admits the allegations as to the formation and duration of his marital
17 community with Kelly Ann Brace, that she relied on his income to maintain the marital
18 community, and that the marital community benefited from draws which he took from the
19 company to pay community expenses. Defendant denies knowledge and information sufficient
20 to form a belief as to the other allegations contained herein.

21 30. Defendant admits the allegations contained herein.

22 31. Defendant admits the allegations contained herein.

23

24 **DEFENDANT'S ANSWER**
AND AFFIRMATIVE DEFENSES

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1 32. Defendant denies knowledge and information sufficient to form a belief as to
2 the allegations contained herein, and therefore denies the same.

3 33. Defendant denies knowledge and information sufficient to form a belief as to
4 the allegations contained herein, and therefore denies the same.

5 34. Defendant denies knowledge and information sufficient to form a belief as to
6 the allegations contained herein, and therefore denies the same.

7 35. Defendant admits the allegations contained herein.

8 36. Defendant admits the allegations contained herein.

9 37. Defendant admits the allegations contained herein.

10 38. Defendant admits the allegations contained herein.

11 39. Defendant admits the allegations contained herein.

12 40. Defendant denies knowledge and information sufficient to form a belief as to
13 the allegations contained herein, and therefore denies the same.

14 41. Defendant admits the allegations contained herein.

15 42. Defendant admits the allegations contained herein.

16 43. Defendant admits the allegations contained herein.

17 44. Defendant admits the allegations contained herein.

18 45. Defendant denies knowledge and information sufficient to form a belief as to
19 Plaintiffs' allegation that "Mr. Ates successfully received a debt discharge
20 through bankruptcy in 2009, he is not unfamiliar with that reward." Defendant admits all other
21 allegations contained herein.

22 46. Defendant admits the allegations contained herein.

23 47. Defendant denies the allegations contained herein.

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1 48. Defendant denies the allegations contained herein.
2 49. Defendant denies the allegations contained herein.
3 50. Defendant admits that other prior customers of FCHI have actions pending
4 against him and/or FCHI. Defendant denies the other allegations contained herein.

5 51. Defendant admits the allegations contained herein.
6 52. Defendant denies the allegations contained herein.
7 53. Defendant denies knowledge and information sufficient to form a belief as to
8 the allegations contained herein.

9 54. Defendant denies knowledge and information sufficient to form a belief as to
10 the allegations contained herein.

11 55. Defendant admits the allegations contained herein.

12 56. Defendant admits the allegations contained herein.

13 57. Defendant admits the allegations contained herein.

14 58. Defendant admits the allegations contained herein.

15 59. Defendant admits the allegations contained herein.

16 60. Defendant admits the allegations contained herein.

17 61. Defendant admits that a specific completion date of mid-June of 2019 does not
18 appear in the contract. Defendant admits that he provided Plaintiffs with a loose calendar
19 estimate of the timeline of work under the contract. Defendant denies all other allegations
20 contained herein.

21 62. Defendant admits the allegations contained herein.

22 63. Defendant admits the allegations contained herein, except that the document in
23 question was not intended to be a definitive materials list.

24 **DEFENDANT'S ANSWER
25 AND AFFIRMATIVE DEFENSES**

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1 64. Defendant denies the allegations contained herein.
2 65. Defendant admits the allegations contained herein.
3 66. Defendant denies knowledge and information sufficient to form a belief as to
4 the allegations contained herein, and therefore denies the same.

5 67. Defendant admits the allegations contained herein.
6 68. Defendant admits the allegations contained herein, with the clarification that
7 he did not know at the time of hiring the subcontractors at issue that they had been
8 unregistered.

9 69. Defendant denies the allegations contained herein.
10 70. Defendant denies the allegations contained herein as to misrepresentation by
11 him. Defendant denies knowledge and information sufficient to form a belief as to the other
12 allegations contained herein, and therefore denies the same.

13 71. Defendant denies the allegations contained herein.
14 72. Defendant denies knowledge and information sufficient to form a belief as to
15 the allegations contained herein, and therefore denies the same.

16 73. Defendant denies the allegations contained herein.
17 74. Defendant denies the allegations contained herein.
18 75. Defendant denies the allegations contained herein as to "contract violations."
19 Defendant denies knowledge and information sufficient to form a belief as to the other
20 allegations contained herein.

21 76. Defendant admits to not timely or fully paying certain subcontractors.
22 Defendant denies knowledge and information sufficient to form a belief as to the other
23 allegations contained herein.

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1 77. Defendant denies the allegations contained herein.
2 78. Defendant denies the allegations contained herein.
3 79. Defendant denies the allegations contained herein.
4 80. Defendant denies knowledge and information sufficient to form a belief as to
5 the other allegations contained herein, and therefore denies the same.
6 81. Defendant admits the allegations contained herein.
7 82. Defendant denies the allegations contained herein.
8 83. Defendant denies the allegations contained herein.
9 84. Defendant denies the allegations contained herein.
10 85. Defendant denies the allegations contained herein.
11 86. Defendant denies having made any "misrepresentation" as alleged herein.
12 Defendant denies knowledge and information sufficient to form a belief as to the other
13 allegations contained herein, and therefore denies the same.
14 87. Defendant denies the allegations contained herein.
15 88. Defendant denies the allegations contained herein.
16 89. Defendant denies that the funds provided by Plaintiffs as alleged herein were
17 not used for installing a septic system. Defendant admits all other allegations contained herein.
18 90. Defendant denies the allegations contained herein.
19 91. Defendant denies the allegations contained herein.
20 92. Defendant admits the allegations contained herein.
21 93. Defendant admits the allegations in the first sentence as to the invoice.
22 Defendant denies the allegations in the second sentence as to unpaid subcontractors.
23
24 **DEFENDANT'S ANSWER**
25 **AND AFFIRMATIVE DEFENSES**
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1 Defendant denies knowledge and information sufficient to form a belief as to the rest of the
2 allegations contained herein.

3 94. Defendant denies the allegations contained herein.

4 95. Defendant denies the allegations contained herein.

5 96. Defendant denies the allegations contained herein.

6 97. Defendant denies the allegations contained herein.

7 98. Defendant admits that his corporate account was garnished but denies
8 knowledge and information sufficient to form a belief as to exactly when this took place.
9 Defendant denies that he was “preparing to take a vacation.” Defendant denies all other
10 allegations contained herein.

11 99. Defendant admits the substance and timing of the correspondence between him
12 and Plaintiffs regarding the concrete basement slab. Defendant denies that he made a false
13 statement regarding the same, and denies all other allegations contained herein.

14 100. Defendant admits that Plaintiffs hired “another builder” as alleged. Defendant
15 denies all other allegations contained herein.

16 101. Defendant denies the allegations contained herein.

17 102. Defendant denies the allegations contained herein.

18 103. Defendant denies the allegations contained herein.

19 104. Defendant denies the allegations contained herein.

20 105. Defendant denies the allegations contained herein.

21 106. Defendant denies the allegations contained herein.

22 107. Defendant denies the allegations contained herein.

23 108. Defendant denies the allegations contained herein.

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1 109. Defendant denies the allegations contained herein.

2 110. Defendant denies the allegations contained herein.

3 111. Defendant denies the allegations contained herein.

4 112. Defendant denies having materially breached the contract. Defendant admits
5 that Plaintiffs terminated the construction contract as dated.

6 113. Defendant denies the allegations contained herein.

7 114. Defendant admits the allegations contained herein.

8 115. Defendant admits to sending a letter of termination to Plaintiffs. Defendant
9 denies that the claim of money owed was false.

10 116. Defendant denies the allegations contained herein.

11 117. Defendant denies the allegations contained herein.

12 118. Defendant denies the allegations contained herein.

13 119. Defendant denies the allegations contained herein.

14 120. Defendant denies the allegations contained herein.

15 121. Defendant denies the allegations contained herein.

16 122. Defendant denies the allegations contained herein.

17 123. Defendant denies knowledge and information sufficient to form a belief as to
18 the allegations contained herein.

19 124. Defendant denies knowledge and information sufficient to form a belief as to
20 the allegations contained herein.

21 125. Defendant denies the allegations contained herein.

22 126. Defendant denies the allegations contained herein.

23 127. Defendant denies the allegations contained herein.

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1 128. Defendant denies the allegations contained herein.

2 129. Defendant admits that he hired Cletus Lovell to do the work as alleged herein.

3 Defendant denies knowing at the time that Mr. Lovell was unregistered. Defendant denies that
4 the work was "poor and incomplete." Defendant denies knowledge and information sufficient
5 to form a belief as to the other allegations contained here, and therefore denies the same.

6 130. Defendant denies the allegations contained herein. The painters were "All Pro
7 Painting," and they were registered.

8 131. Defendant denies the allegations contained herein.

9 132. Defendant denies the allegations contained herein.

10 133. Defendant admits the allegations contained herein. Defendant did not know at
11 the time that Zach Irish was unregistered.

12 134. Defendant denies the allegations contained herein.

13 135. Defendant denies knowledge and information sufficient to form a belief as to
14 the allegations contained herein.

15 136. Defendant answers the allegations contained herein as follows:

16 a. Defendant admits the allegations contained herein, but denies that he did as
17 alleged to deliberately minimize his income tax liability.

18 b. Defendant admits the allegations contained herein.

19 c. Defendant admits the allegations contained herein.

20 d. Defendant denies knowledge and information sufficient to form a belief as to
21 the allegations contained herein.

22 e. Defendant admits the allegations contained herein.

23 f. Defendant denies the allegations contained herein.

24 **DEFENDANT'S ANSWER
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- g. Defendant denies the allegations contained herein.
- h. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained herein.
- i. Defendant admits in part and denies in part the allegations contained herein; he did characterize the “the large personal repayments to his sister” alleged as “corporate expenses,” but this is because it was for a business debt to the Department of Revenue.

137. Defendant denies the allegations contained herein.

138. Defendant denies the allegations contained herein.

139. Defendant admits to having filed for bankruptcy in 2009. Defendant denies all other allegations contained herein.

140. Defendant denies the allegations contained herein.

141. Defendant denies the allegations contained herein. Defendant did not pay Port Orchard Plumbing because Plaintiffs did not pay a scheduled draw and fired Defendant.

142. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained herein, and therefore denies the same.

143. Defendant denies the allegations contained herein.

144. Defendant denies the allegations contained herein.

145. Defendant denies the allegations contained herein.

146. Defendant denies the allegations contained herein.

147. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained herein.

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

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1 148. Defendant realleges and incorporates by reference Paragraphs 1 through 147
2 of this Complaint as if fully set forth herein.

3 149. Defendant denies the allegations contained herein.

4 150. Defendant denies the allegations contained herein.

5 151. Defendant admits the allegations contained herein.

6 152. Defendant denies the allegations contained herein.

7 153. Defendant admits the allegations contained herein.

8 154. Defendant admits in part and denies in part the allegations contained herein;
9 Plaintiff did acknowledge knowing that the some of the subcontractors were unregistered, but
10 he did not know that at the time.

11 155. Defendant denies the allegations contained herein.

12 156. Defendant denies knowledge and information sufficient to form a belief as to
13 the allegations contained herein, and therefore denies the same.

14 157. Defendant denies the allegations contained herein.

15 158. Defendant denies knowledge and information sufficient to form a belief as to
16 the allegations contained herein, and therefore denies the same.

17 159. Defendant denies the allegations contained herein.

18 160. Defendant denies knowledge and information sufficient to form a belief as to
19 the allegations contained herein, and therefore denies the same.

20 161. Defendant denies the allegations contained herein.

21 162. Defendant denies the allegations contained herein.

22 163. Defendant denies knowledge and information sufficient to form a belief as to
23 the allegations contained herein, and therefore denies the same.

24 **DEFENDANT'S ANSWER
25 AND AFFIRMATIVE DEFENSES**

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1 164. Defendant denies the allegations contained herein.

2 165. Defendant denies the allegations contained herein.

3 166. Defendant denies the allegations contained herein.

4 167. Defendant denies knowledge and information sufficient to form a belief as to
5 the allegations contained herein, and therefore denies the same.

6 168. Defendant denies knowledge and information sufficient to form a belief as to
7 the allegations contained herein, and therefore denies the same.

8 169. Defendant admits the allegations contained herein.

9 170. Defendant denies the allegations contained herein.

10 171. Defendant denies the allegations contained herein.

11 172. Defendant denies the allegations contained herein.

12 173. Defendant denies the allegations contained herein.

13 174. Defendant denies the allegations contained herein.

14 175. Defendant denies the allegations contained herein.

15 176. Defendant denies knowledge and information sufficient to form a belief as to
16 the allegations contained herein, and therefore denies the same.

17 177. Denied as calling for a legal conclusion.

18 178. Defendant denies the allegations contained herein.

19 179. Defendant denies the allegations contained herein.

20 180. Defendant realleges and incorporates by reference Paragraphs 1 through 179
21 of this Complaint as if fully set forth herein

22 181. Defendant denies the allegations contained herein.

23

24 **DEFENDANT'S ANSWER
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1 182. Defendant denies knowledge and information sufficient to form a belief as to
2 the allegations contained herein.

3 183. Defendant denies the allegations contained herein.

4 184. Defendant denies the allegations contained herein.

5 185. Defendant denies the allegations contained herein.

6 186. Defendant denies the allegations contained herein.

7 187. Defendant realleges and incorporates by reference Paragraphs 1 through 186
8 of this Complaint as if fully set forth herein

9 188. Defendant denies the allegations contained herein.

10 189. Defendant denies the allegations contained herein.

11 190. Defendant denies the allegations contained herein, and further denies as
12 calling for a legal conclusion.

13 191. Defendant denies the allegations contained herein.

14 192. Defendant denies the allegations contained herein.

15 193. Defendant denies the allegations contained herein.

16 194. Defendant denies the allegations contained herein, and further denies as
17 calling for a legal conclusion.

18 195. Denied as calling for a legal conclusion.

19 196. Defendant denies knowledge and information sufficient to form a belief as to
20 the allegations contained herein, and therefore denies the same, and further denies as calling
21 for a legal conclusion.

22 197. Defendant denies the allegations contained herein.

23 198. Denied as calling for a legal conclusion.

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1 199. Defendant denies the allegations contained herein.
2 200. Defendant denies the allegations contained herein.
3 201. Defendant admits that he went through another bankruptcy in 2009, owing to
4 the Great Recession. Defendant denies the other allegations contained herein.

5 202. Defendant denies the allegations contained herein.
6 203. Defendant realleges and incorporates by reference Paragraphs 1 through 202
7 of this Complaint as if fully set forth herein

8 204. Defendant denies the allegations contained herein.
9 205. Defendant denies the allegations contained herein.
10 206. Defendant denies the allegations contained herein.
11 207. Defendant denies the allegations contained herein.
12 208. Defendant denies the allegations contained herein.
13 209. Defendant admits that FCHI did not pay a plumbing subcontractor, but this
14 was because Defendant had previously been fired by Plaintiffs. Defendant denies knowledge
15 and information sufficient to form a belief as to the other allegations contained herein, and
16 therefore denies the same.

17 210. Defendant denies the allegations contained herein.
18 211. Defendant denies the allegations contained herein.
19 212. Defendant denies the allegations contained herein.
20 213. Defendant denies the allegations contained herein.
21 214. Defendant denies the allegations contained herein.
22 215. Defendant denies the allegations contained herein.
23 216. Defendant denies the allegations contained herein.

24 **DEFENDANT'S ANSWER
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1 217. Defendant denies the allegations contained herein.

2 218. Defendant realleges and incorporates by reference Paragraphs 1 through 217

3 of this Complaint as if fully set forth herein

4 219. Defendant denies the allegations contained herein.

5 220. Defendant denies the allegations contained herein.

6 221. Defendant denies the allegations contained herein.

7 222. Defendant denies the allegations contained herein.

8 223. Defendant denies the allegations contained herein.

9 224. Defendant denies the allegations contained herein.

10 225. Defendant denies the allegations contained herein.

11 226. Defendant denies the allegations contained herein.

12 227. Defendant denies the allegations contained herein.

13 228. Defendant realleges and incorporates by reference Paragraphs 1 through 227

14 of this Complaint as if fully set forth herein

15 229. Defendant denies the allegations contained herein.

16 230. Defendant denies the allegations contained herein.

17 231. Defendant denies the allegations contained herein.

18 232. Defendant realleges and incorporates by reference Paragraphs 1 through 231

19 of this Complaint as if fully set forth herein

20 233. Defendant denies the allegations contained herein.

21 234. Defendant denies knowledge and information sufficient to form a belief as to
22 the allegations contained herein.

23 235. Defendant denies the allegations contained herein.

24 **DEFENDANT'S ANSWER
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236. Defendant denies the allegations contained herein.

237. Defendant denies the allegations contained herein.

238. Defendant denies the allegations contained herein.

239. Defendant denies the allegations contained herein.

240. Defendant realleges and incorporates by reference Paragraphs 1 through 239 of this Complaint as if fully set forth herein.

241. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained herein.

242. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained herein.

243. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained herein.

244. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained herein.

245. Defendant denies knowledge and information sufficient to form a belief as to the allegations contained herein.

246. Defendant denies the allegations contained herein.

247. Defendant denies the allegations contained herein.

RESERVATION OF RIGHTS

A. Defendant denies all allegations in Plaintiff's Complaint not specifically and expressly admitted herein.

B. Defendant denies Plaintiff's prayer in its entirety and imposes upon Plaintiff strict proof thereof.

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

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C. Defendant reserves the right to assert additional affirmative defenses made known through discovery and investigation and reserves the right to assert additional counterclaims, crossclaims, and/or third-party claims in addition to those asserted herein. Plaintiff is also notified that although Defendant is asserting defenses “subject to further discovery” to preserve his right to maintain them if and as discovery herein shall warrant, Defendant will voluntarily withdraw them if at the conclusion of discovery and investigation herein he determines there is no evidence to support them.

AFFIRMATIVE DEFENSES

BY WAY OF FURTHER ANSWER AND AS AFFIRMATIVE DEFENSES, Defendant, without admitting any matters previously denied and without waiving any claims, counterclaims, third-party claims, defenses, or remedies, alleges as follows as to some or all of Plaintiffs' claims:

A. Plaintiffs have failed to state a claim upon which relief may be granted.

B. Plaintiffs' injuries or damages, if any, were caused in whole or in part by Plaintiffs' own acts or omissions and/or the acts or omissions of a third-party or non-party.

C. Some or all of Plaintiffs' claims are barred by Plaintiffs' failure to mitigate their damages, if any, and to protect themselves from avoidable consequences.

D. Some or all of Plaintiffs' claims are barred by the doctrines of unclean hands, waiver, laches, and/or estoppel.

E. Some or all of Plaintiffs' claims are barred by accord and satisfaction.

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

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DEFENDANT'S PRAYER FOR RELIEF

Having answered Plaintiffs' Complaint, Defendant hereby prays for the following relief:

1. For dismissal of all of Plaintiffs' claims, with prejudice;
2. For an award of reasonable attorneys' fees and costs, as provided for by contract, statute, or in equity; and
3. For such other and further relief as this Court deems just and proper.

DATED this 17th day of November, 2021.

DAVIES PEARSON, P.C.

/s/ Christopher J. Marston

CHRISTOPHER J. MARSTON,
WSB #30571
Attorneys for Defendant Stephen Lee Ates

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ **Kathy Bates**
Kathy A. Bates, Legal Assistant

**DEFENDANT'S ANSWER
AND AFFIRMATIVE DEFENSES**

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